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HOUSE BILL 2293

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State of Washington                      58th Legislature                      2003 1st Special  
Session

By Representative Chandler

Read first time . Referred to .

1            AN ACT Relating to simplifying and adding certainty to the  
2 calculation of workers' compensation benefits; amending RCW 51.08.178,  
3 51.28.040, 51.28.055, 51.32.050, 51.32.060, 51.32.072, 51.32.075,  
4 51.32.080, 51.32.095, and 51.36.020; reenacting and amending RCW  
5 51.32.090; adding new sections to chapter 51.08 RCW; adding a new  
6 section to chapter 51.32 RCW; providing an effective date; and  
7 declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9            NEW SECTION.    **Sec. 1.** A new section is added to chapter 51.08 RCW  
10 to read as follows:

11            "Inflation" means the percentage change in the implicit price  
12 deflator for personal consumption expenditures for the United States as  
13 published for the most recent twelve-month period by the bureau of  
14 economic analysis of the federal department of commerce in September of  
15 the year before a June 30th determination.

16            **Sec. 2.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read  
17 as follows:

18            ~~((1) For the purposes of this title, the monthly wages the worker~~

1 was receiving from all employment at the time of injury shall be the  
2 basis upon which compensation is computed unless otherwise provided  
3 specifically in the statute concerned. In cases where the worker's  
4 wages are not fixed by the month, they shall be determined by  
5 multiplying the daily wage the worker was receiving at the time of the  
6 injury:

7 (a) By five, if the worker was normally employed one day a week;

8 (b) By nine, if the worker was normally employed two days a week;

9 (c) By thirteen, if the worker was normally employed three days a  
10 week;

11 (d) By eighteen, if the worker was normally employed four days a  
12 week;

13 (e) By twenty two, if the worker was normally employed five days a  
14 week;

15 (f) By twenty six, if the worker was normally employed six days a  
16 week;

17 (g) By thirty, if the worker was normally employed seven days a  
18 week.

19 The term "wages" shall include the reasonable value of board,  
20 housing, fuel, or other consideration of like nature received from the  
21 employer as part of the contract of hire, but shall not include  
22 overtime pay except in cases under subsection (2) of this section.  
23 However, tips shall also be considered wages only to the extent such  
24 tips are reported to the employer for federal income tax purposes. The  
25 daily wage shall be the hourly wage multiplied by the number of hours  
26 the worker is normally employed. The number of hours the worker is  
27 normally employed shall be determined by the department in a fair and  
28 reasonable manner, which may include averaging the number of hours  
29 worked per day.

30 (2) In cases where (a) the worker's employment is exclusively  
31 seasonal in nature or (b) the worker's current employment or his or her  
32 relation to his or her employment is essentially part time or  
33 intermittent, the monthly wage shall be determined by dividing by  
34 twelve the total wages earned, including overtime, from all employment  
35 in any twelve successive calendar months preceding the injury which  
36 fairly represent the claimant's employment pattern.

37 (3) If, within the twelve months immediately preceding the injury,

1 the worker has received from the employer at the time of injury a bonus  
2 as part of the contract of hire, the average monthly value of such  
3 bonus shall be included in determining the worker's monthly wages.

4 (4) In cases where a wage has not been fixed or cannot be  
5 reasonably and fairly determined, the monthly wage shall be computed on  
6 the basis of the usual wage paid other employees engaged in like or  
7 similar occupations where the wages are fixed.) (1) "Wages" means the  
8 gross cash compensation paid by the employer for services performed.

9 (2) "Cash" means payment in cash, by check, by electronic transfer,  
10 or by other means made directly to the worker at the end of each pay  
11 period before any mandatory deductions required by state or federal  
12 law.

13 (3) The worker's monthly wage shall be determined by dividing by  
14 twelve the total wages earned from all employment, including cash  
15 bonuses and overtime pay, in any four successive quarters in the  
16 twenty-four months preceding the injury or manifestation of  
17 occupational disease that most reasonably represents the worker's  
18 wages.

19 (a) Tips shall be considered wages only to the extent that such  
20 tips are reported to the employer for federal income tax purposes.

21 (b) Wages shall include the actual value of board, housing, and  
22 fuel received from the employer as part of the contract of hire and for  
23 which an internal revenue service form 1099 is required. This  
24 subsection does not apply during any period in which the employer  
25 continues to provide, through a past or current payment, board,  
26 housing, and/or fuel that were provided to the employee at the time of  
27 the injury or manifestation of occupational disease.

28 (c) Wages shall not include fringe benefits. Fringe benefits are  
29 any consideration given to a worker in addition to wages including, but  
30 not limited to: Retirement and financial benefit plans of whatever  
31 nature; mental and physical health insurance and treatment of whatever  
32 nature; life, disability, and wage-replacement insurance of whatever  
33 nature; unused, accrued leave of whatever nature; memberships of  
34 whatever nature; employee discounts or use or consumption of employer  
35 services, materials, equipment, and facilities of whatever nature;  
36 training and education of whatever nature; and other employee or  
37 beneficiary benefit plan for the employee's or beneficiaries' benefit  
38 resulting from the employment relationship.

1       (4) In cases where the worker is self-employed or the worker's  
2 monthly wage cannot be reasonably determined under subsection (3) of  
3 this section due to the worker sustaining an injury or occupational  
4 disease less than one year after beginning an employment relationship  
5 that both the worker and the employer intend to be continuous and  
6 lasting without limit into the foreseeable future, and which provides  
7 wages, on an annualized basis, of greater than one hundred fifty  
8 percent of wages earned by the worker in the twelve months before  
9 beginning such employment, the monthly wage shall be computed on the  
10 basis of the usual wage paid other employees of the employer at the  
11 time of injury or manifestation of occupational disease who perform  
12 like job duties with like work patterns or, if none exist, other  
13 employees in the worker's labor market who perform like job duties with  
14 like work patterns.

15       (5) In cases where the worker's monthly wage cannot be reasonably  
16 determined under subsection (3) of this section due to the worker  
17 sustaining an injury or occupational disease less than one year after  
18 beginning an employment relationship that either the worker or the  
19 employer do not intend to be continuous and lasting without limit into  
20 the foreseeable future, or which provides wages, on an annualized  
21 basis, of fifty percent or less of wages earned by the worker in the  
22 twelve months before beginning such employment, the monthly wage shall  
23 be computed on the basis of the usual wage paid other employees of the  
24 employer at the time of injury or manifestation of occupational disease  
25 who perform like job duties with like work patterns, or, if none exist,  
26 other employees in the worker's labor market who perform like job  
27 duties with like work patterns.

28       (6) If the employer or department cannot obtain sufficient accurate  
29 information to calculate the worker's wages pursuant to subsection (3)  
30 of this section before the first payment of temporary total disability  
31 compensation is due, payments may be made provisionally based upon the  
32 worker's wages on the date of injury or manifestation of occupational  
33 disease. For purposes of this subsection only, "wages" means the gross  
34 cash compensation paid by the employer for services performed. "Cash"  
35 means payment in cash, by check, by electronic transfer, or by other  
36 means made directly to the worker at the end of each pay period before  
37 any mandatory deductions required by state or federal law.

1           **Sec. 3.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to  
2 read as follows:

3           ~~((If change of circumstances warrants an increase or rearrangement~~  
4 ~~of compensation, like application shall be made therefor.))~~ Where the  
5 worker's application to reopen a claim has been granted under RCW  
6 51.32.160, compensation and other benefits if in order shall be allowed  
7 for periods of time up to sixty days prior to the receipt of such  
8 application.

9           **Sec. 4.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read  
10 as follows:

11           (1) Except as provided in subsection (2) of this section for claims  
12 filed for occupational hearing loss, claims for occupational disease or  
13 infection to be valid and compensable must be filed within two years  
14 following the date the worker had written notice from a physician:  
15 ~~((1))~~ (a) Of the existence of his or her occupational disease, and  
16 ~~((2))~~ (b) that a claim for disability benefits may be filed. The  
17 notice shall also contain a statement that the worker has two years  
18 from the date of the notice to file a claim. The physician shall file  
19 the notice with the department. The department shall send a copy to  
20 the worker and to the self-insurer if the worker's employer is self-  
21 insured. However, a claim is valid if it is filed within two years  
22 from the date of death of the worker suffering from an occupational  
23 disease.

24           (2)(a) Except as provided in (b) of this subsection, to be valid  
25 and compensable, claims for hearing loss due to occupational noise  
26 exposure must be filed within two years of the date of the worker's  
27 last injurious exposure to occupational noise in employment covered  
28 under this title or within one year of the effective date of this  
29 section, whichever is later.

30           (b) A claim for hearing loss due to occupational noise exposure  
31 that is not timely filed under (a) of this subsection can only be  
32 allowed for medical aid benefits under chapter 51.36 RCW.

33           (3) The department may adopt rules to implement this section.

34           **Sec. 5.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read  
35 as follows:

36           (1)(a) For claims with date of injury or manifestation of

1 occupational disease before July 1, 2003, where death results from the  
2 injury, the expenses of burial not to exceed two hundred percent of the  
3 average monthly wage in the state as defined in RCW 51.08.018 shall be  
4 paid.

5 (b) For claims with date of injury or manifestation of occupational  
6 disease on or after July 1, 2003, where death results from the injury,  
7 the expenses of burial shall be paid, not to exceed an amount  
8 determined by the department on June 30, 2002, and each June 30th  
9 thereafter, and applicable to claims filed with respect to injuries  
10 occurring in the twelve-month period following the June 30th  
11 determination. The amount is determined by adjusting the amount  
12 applicable during the previous twelve-month period to account for  
13 inflation.

14 (2)(a)(i) For claims with date of injury or manifestation of  
15 occupational disease before July 1, 2003, where death results from the  
16 injury, a surviving spouse of a deceased worker eligible for benefits  
17 under this title shall receive monthly for life or until remarriage  
18 payments according to the following schedule:

19 ((+i)) (A) If there are no children of the deceased worker, sixty  
20 percent of the wages of the deceased worker but not less than one  
21 hundred eighty-five dollars;

22 ((+ii)) (B) If there is one child of the deceased worker and in  
23 the legal custody of such spouse, sixty-two percent of the wages of the  
24 deceased worker but not less than two hundred twenty-two dollars;

25 ((+iii)) (C) If there are two children of the deceased worker and  
26 in the legal custody of such spouse, sixty-four percent of the wages of  
27 the deceased worker but not less than two hundred fifty-three dollars;

28 ((+iv)) (D) If there are three children of the deceased worker and  
29 in the legal custody of such spouse, sixty-six percent of the wages of  
30 the deceased worker but not less than two hundred seventy-six dollars;

31 ((+v)) (E) If there are four children of the deceased worker and  
32 in the legal custody of such spouse, sixty-eight percent of the wages  
33 of the deceased worker but not less than two hundred ninety-nine  
34 dollars; or

35 ((+vi)) (F) If there are five or more children of the deceased  
36 worker and in the legal custody of such spouse, seventy percent of the  
37 wages of the deceased worker but not less than three hundred twenty-two  
38 dollars.

1        (ii) For claims with date of injury or manifestation of  
2 occupational disease on or after July 1, 2003, where death results from  
3 the injury, a surviving spouse of a deceased worker eligible for  
4 benefits under this title shall receive monthly for life or until  
5 remarriage payments of sixty-five and five-tenths percent of the wages  
6 of the deceased worker, but not less than two hundred seventy-six  
7 dollars.

8        (b) Where the surviving spouse does not have legal custody of any  
9 child or children of the deceased worker or where after the death of  
10 the worker legal custody of such child or children passes from such  
11 surviving spouse to another, any payment on account of such child or  
12 children not in the legal custody of the surviving spouse shall be made  
13 to the person or persons having legal custody of such child or  
14 children. The amount of such payments shall be five percent of the  
15 monthly benefits payable as a result of the worker's death for each  
16 such child but such payments shall not exceed twenty-five percent.  
17 Such payments on account of such child or children shall be subtracted  
18 from the amount to which such surviving spouse would have been entitled  
19 had such surviving spouse had legal custody of all of the children and  
20 the surviving spouse shall receive the remainder after such payments on  
21 account of such child or children have been subtracted. Such payments  
22 on account of a child or children not in the legal custody of such  
23 surviving spouse shall be apportioned equally among such children.

24        (c) Payments to the surviving spouse of the deceased worker shall  
25 cease at the end of the month in which remarriage occurs: PROVIDED,  
26 That a monthly payment shall be made to the child or children of the  
27 deceased worker from the month following such remarriage in a sum equal  
28 to five percent of the wages of the deceased worker for one child and  
29 a sum equal to five percent for each additional child up to a maximum  
30 of five such children. Payments to such child or children shall be  
31 apportioned equally among such children. Such sum shall be in place of  
32 any payments theretofore made for the benefit of or on account of any  
33 such child or children. If the surviving spouse does not have legal  
34 custody of any child or children of the deceased worker, or if after  
35 the death of the worker, legal custody of such child or children passes  
36 from such surviving spouse to another, any payment on account of such  
37 child or children not in the legal custody of the surviving spouse

1 shall be made to the person or persons having legal custody of such  
2 child or children.

3 ~~(d) ((In no event shall))~~ (i) For claims with date of injury or  
4 manifestation of occupational disease before July 1, 2003, the monthly  
5 payments provided in subsection (2) of this section may not exceed the  
6 applicable percentage of the average monthly wage in the state as  
7 computed under RCW 51.08.018 as follows:

8	AFTER	PERCENTAGE
9	June 30, 1993	105%
10	June 30, 1994	110%
11	June 30, 1995	115%
12	June 30, 1996	120%

13 (ii) For claims with date of injury or manifestation of  
14 occupational disease on or after July 1, 2002, but before June 30,  
15 2004, the monthly payments provided in this subsection may not exceed  
16 one hundred twenty percent of the average monthly wage in the state on  
17 June 30, 2003. For all claims with the date of injury or manifestation  
18 of occupational disease on or after July 1, 2004, the monthly payments  
19 provided in this subsection may not exceed an amount determined by the  
20 department on June 30, 2003, and each June 30th thereafter, and  
21 applicable to claims with date of injury or manifestation of  
22 occupational disease in the twelve-month period following the June 30th  
23 determination. The amount is determined by adjusting the June 30,  
24 2003, amount for inflation on June 30, 2004. In subsequent years, the  
25 department shall adjust the amount applicable during the previous  
26 twelve-month period to account for inflation.

27 (e) In addition to the monthly payments provided for in subsection  
28 (2)(a) through (c) of this section, a surviving spouse or child or  
29 children of such worker if there is no surviving spouse, or dependent  
30 parent or parents, if there is no surviving spouse or child or children  
31 of any such deceased worker shall be forthwith paid a sum equal to one  
32 hundred percent of the average monthly wage in the state as defined in  
33 RCW 51.08.018, any such children, or parents to share and share alike  
34 in said sum.

35 (f) Upon remarriage of a surviving spouse the monthly payments for  
36 the child or children shall continue as provided in this section, but

1 the monthly payments to such surviving spouse shall cease at the end of  
2 the month during which remarriage occurs. However, after September 8,  
3 1975, an otherwise eligible surviving spouse of a worker who died at  
4 any time prior to or after September 8, 1975, shall have an option of:

5 (i) Receiving, once and for all, a lump sum of twenty-four times  
6 the monthly compensation rate in effect on the date of remarriage  
7 allocable to the spouse for himself or herself pursuant to subsection  
8 (2)(a)(i)(A) of this section and subject to any modifications specified  
9 under subsection (2)(d) of this section and RCW 51.32.075(~~(+3)~~) (1)(c)  
10 or fifty percent of the then remaining annuity value of his or her  
11 pension, whichever is the lesser: PROVIDED, That if the injury  
12 occurred prior to July 28, 1991, the remarriage benefit lump sum  
13 available shall be as provided in the remarriage benefit schedules then  
14 in effect; or

15 (ii) If a surviving spouse does not choose the option specified in  
16 subsection (2)(f)(i) of this section to accept the lump sum payment,  
17 the remarriage of the surviving spouse of a worker shall not bar him or  
18 her from claiming the lump sum payment authorized in subsection  
19 (2)(f)(i) of this section during the life of the remarriage, or shall  
20 not prevent subsequent monthly payments to him or to her if the  
21 remarriage has been terminated by death or has been dissolved or  
22 annulled by valid court decree provided he or she has not previously  
23 accepted the lump sum payment.

24 (g) If the surviving spouse during the remarriage should die  
25 without having previously received the lump sum payment provided in  
26 subsection (2)(f)(i) of this section, his or her estate shall be  
27 entitled to receive the sum specified under subsection (2)(f)(i) of  
28 this section or fifty percent of the then remaining annuity value of  
29 his or her pension whichever is the lesser.

30 (h) The effective date of resumption of payments under subsection  
31 (2)(f)(ii) of this section to a surviving spouse based upon termination  
32 of a remarriage by death, annulment, or dissolution shall be the date  
33 of the death or the date the judicial decree of annulment or  
34 dissolution becomes final and when application for the payments has  
35 been received.

36 (i) If it should be necessary to increase the reserves in the  
37 reserve fund or to create a new pension reserve fund as a result of the

1 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of  
2 such increase in pension reserve in any such case shall be transferred  
3 to the reserve fund from the supplemental pension fund.

4 (3) If there is a child or children and no surviving spouse of the  
5 deceased worker or the surviving spouse is not eligible for benefits  
6 under this title, a sum equal to thirty-five percent of the wages of  
7 the deceased worker shall be paid monthly for one child and a sum  
8 equivalent to fifteen percent of such wage shall be paid monthly for  
9 each additional child, the total of such sum to be divided among such  
10 children, share and share alike(~~(:—PROVIDED, That)~~), subject to the  
11 following:

12 (a) For claims with date of injury or manifestation of occupational  
13 disease before July 1, 2003, benefits under this subsection or  
14 subsection (4) of this section shall not exceed the lesser of sixty-  
15 five percent of the wages of the deceased worker at the time of his or  
16 her death or the applicable percentage of the average monthly wage in  
17 the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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23 (b) For claims with date of injury or manifestation of occupational  
24 disease on or after July 1, 2003, but before June 30, 2004, the monthly  
25 payments provided in this subsection may not exceed one hundred twenty  
26 percent of the average monthly wage in the state on June 30, 2003. For  
27 all claims with date of injury or manifestation of occupational disease  
28 on or after July 1, 2004, the monthly payments provided in this  
29 subsection may not exceed an amount determined by the department on  
30 June 30, 2003, and each June 30th thereafter, and applicable to claims  
31 with date of injury or manifestation of occupational disease in the  
32 twelve-month period following the June 30th determination. The amount  
33 is determined by adjusting the June 30, 2003, amount for inflation on  
34 June 30, 2004. In subsequent years, the department shall adjust the  
35 amount applicable during the previous twelve-month period to account  
36 for inflation.

1 (4) In the event a surviving spouse receiving monthly payments  
2 dies, the child or children of the deceased worker shall receive the  
3 same payment as provided in subsection (3) of this section.

4 (5)(a) If the worker leaves no surviving spouse or child, but  
5 leaves a dependent or dependents, a monthly payment shall be made to  
6 each dependent as follows:

7 (i) For claims with date of injury or manifestation of occupational  
8 disease before July 1, 2003, the monthly payment shall be equal to  
9 fifty percent of the average monthly support actually received by such  
10 dependent from the worker during the twelve months next preceding the  
11 occurrence of the injury, but the total payment to all dependents in  
12 any case shall not exceed the lesser of sixty-five percent of the wages  
13 of the deceased worker at the time of his or her death or the  
14 applicable percentage of the average monthly wage in the state as  
15 defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

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21 (ii) For claims with date of injury or manifestation of  
22 occupational disease on or after July 1, 2003, but before June 30,  
23 2004, the monthly payments provided in this subsection may not exceed  
24 one hundred twenty percent of the average monthly wage in the state on  
25 June 30, 2003. For all claims with date of injury or manifestation of  
26 occupational disease on or after July 1, 2004, the monthly payments  
27 provided in this subsection may not exceed an amount determined by the  
28 department on June 30, 2003, and each June 30th thereafter, and  
29 applicable to claims with date of injury or manifestation of  
30 occupational disease occurring in the twelve-month period following the  
31 June 30th determination. The amount is determined by adjusting the  
32 June 30, 2003, amount for inflation on June 30, 2004. In subsequent  
33 years, the department shall adjust the amount applicable during the  
34 previous twelve-month period to account for inflation.

35 (b) If any dependent is under the age of eighteen years at the time  
36 of the occurrence of the injury, the payment to such dependent shall

1 cease when such dependent reaches the age of eighteen years except such  
2 payments shall continue until the dependent reaches age twenty-three  
3 while permanently enrolled at a full time course in an accredited  
4 school. The payment to any dependent shall cease if and when, under  
5 the same circumstances, the necessity creating the dependency would  
6 have ceased if the injury had not happened.

7 (6) For claims filed prior to July 1, 1986, if the injured worker  
8 dies during the period of permanent total disability, whatever the  
9 cause of death, leaving a surviving spouse, or child, or children, the  
10 surviving spouse or child or children shall receive benefits as if  
11 death resulted from the injury as provided in subsections (2) through  
12 (4) of this section. Upon remarriage or death of such surviving  
13 spouse, the payments to such child or children shall be made as  
14 provided in subsection (2) of this section when the surviving spouse of  
15 a deceased worker remarries.

16 (7) For claims filed on or after July 1, 1986, every worker who  
17 becomes eligible for permanent total disability benefits shall elect an  
18 option as provided in RCW 51.32.067.

19 **Sec. 6.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read  
20 as follows:

21 (1) Except as provided in subsection (2) of this section, when the  
22 supervisor of industrial insurance (~~shall~~) determines that permanent  
23 total disability results from the injury, the worker shall receive  
24 monthly during the period of such disability:

25 (a) If married at the time of injury, sixty-five percent of his or  
26 her wages but not less than two hundred fifteen dollars per month.

27 (b) If married with one child at the time of injury, sixty-seven  
28 percent of his or her wages but not less than two hundred fifty-two  
29 dollars per month.

30 (c) If married with two children at the time of injury, sixty-nine  
31 percent of his or her wages but not less than two hundred eighty-three  
32 dollars.

33 (d) If married with three children at the time of injury,  
34 seventy-one percent of his or her wages but not less than three hundred  
35 six dollars per month.

36 (e) If married with four children at the time of injury,

1 seventy-three percent of his or her wages but not less than three  
2 hundred twenty-nine dollars per month.

3 (f) If married with five or more children at the time of injury,  
4 seventy-five percent of his or her wages but not less than three  
5 hundred fifty-two dollars per month.

6 (g) If unmarried at the time of the injury, sixty percent of his or  
7 her wages but not less than one hundred eighty-five dollars per month.

8 (h) If unmarried with one child at the time of injury, sixty-two  
9 percent of his or her wages but not less than two hundred twenty-two  
10 dollars per month.

11 (i) If unmarried with two children at the time of injury,  
12 sixty-four percent of his or her wages but not less than two hundred  
13 fifty-three dollars per month.

14 (j) If unmarried with three children at the time of injury,  
15 sixty-six percent of his or her wages but not less than two hundred  
16 seventy-six dollars per month.

17 (k) If unmarried with four children at the time of injury,  
18 sixty-eight percent of his or her wages but not less than two hundred  
19 ninety-nine dollars per month.

20 (l) If unmarried with five or more children at the time of injury,  
21 seventy percent of his or her wages but not less than three hundred  
22 twenty-two dollars per month.

23 (2) For any claim with date of injury or manifestation of  
24 occupational disease on or after July 1, 2003, when the supervisor of  
25 industrial insurance determines that permanent total disability results  
26 from the injury, the worker shall receive monthly during the period of  
27 such disability sixty-five and five-tenths percent of his or her wages  
28 as determined under RCW 51.08.178, but not less than two hundred  
29 seventy-six dollars per month.

30 (3) For any period of time where both husband and wife are entitled  
31 to compensation as temporarily or totally disabled workers, only that  
32 spouse having the higher wages of the two shall be entitled to claim  
33 their child or children for compensation purposes under subsection (1)  
34 of this section.

35 ((+3)) (4) In case of permanent total disability, if the character  
36 of the injury is such as to render the worker so physically helpless as  
37 to require the hiring of the services of an attendant, the department  
38 shall make monthly payments to such attendant for such services as long

1 as such requirement continues, but such payments shall not obtain or be  
2 operative while the worker is receiving care under or pursuant to the  
3 provisions of chapter 51.36 RCW and RCW 51.04.105.

4 ~~((+4))~~ (5) Should any further accident result in the permanent  
5 total disability of an injured worker, he or she shall receive the  
6 pension to which he or she would be entitled, notwithstanding the  
7 payment of a lump sum for his or her prior injury.

8 ~~((+5) In no event shall))~~ (6)(a)(i) For claims filed before July 1,  
9 2003, the monthly payments provided in this section may not exceed the  
10 applicable percentage of the average monthly wage in the state as  
11 computed under the provisions of RCW 51.08.018 as follows:

12 AFTER PERCENTAGE

13	June 30, 1993	105%
14	June 30, 1994	110%
15	June 30, 1995	115%
16	June 30, 1996	120%

17 (ii) For claims with date of injury or manifestation of  
18 occupational disease on or after July 1, 2003, but before June 30,  
19 2004, the monthly payments provided in this subsection may not exceed  
20 one hundred twenty percent of the average monthly wage in the state on  
21 June 30, 2003. For all claims with date of injury or manifestation of  
22 occupational disease on or after July 1, 2004, the monthly payments  
23 provided in this subsection may not exceed an amount determined by the  
24 department on June 30, 2003, and each June 30th thereafter, and  
25 applicable to claims with date of injury or manifestation of  
26 occupational disease occurring in the twelve-month period following the  
27 June 30th determination. The amount is determined by adjusting the  
28 June 30, 2003, amount for inflation on June 30, 2004. In subsequent  
29 years, the department shall adjust the amount applicable during the  
30 previous twelve-month period to account for inflation.

31 (b) The limitations under this subsection shall not apply to the  
32 payments provided for in subsection ~~((+3))~~ (4) of this section.

33 ~~((+6))~~ (7) In the case of new or reopened claims, if the  
34 supervisor of industrial insurance determines that, at the time of  
35 filing or reopening, the worker is voluntarily retired and is no longer

1 attached to the work force, benefits shall not be paid under this  
2 section.

3 ~~((7))~~ (8) The benefits provided by this section are subject to  
4 modification under RCW 51.32.067.

5 **Sec. 7.** RCW 51.32.072 and 1987 c 185 s 34 are each amended to read  
6 as follows:

7 (1)(a) Notwithstanding any other provision of law, every surviving  
8 spouse and every permanently totally disabled worker or temporarily  
9 totally disabled worker, if such worker was unmarried at the time of  
10 the worker's injury or was then married but the marriage was later  
11 terminated by judicial action, receiving a pension or compensation for  
12 temporary total disability under this title pursuant to compensation  
13 schedules in effect prior to July 1, 1971, shall after July 1, 1975,  
14 and until July 1, 2003, be paid fifty percent of the average monthly  
15 wage in the state as computed under RCW 51.08.018 per month and an  
16 amount equal to five percent of such average monthly wage per month to  
17 such totally disabled worker if married at the time of the worker's  
18 injury and the marriage was not later terminated by judicial action,  
19 and an additional two percent of such average monthly wage for each  
20 child of such totally disabled worker at the time of injury in the  
21 legal custody of such totally disabled worker or such surviving spouse  
22 up to a maximum of five such children. The monthly payments such  
23 surviving spouse or totally disabled worker are receiving pursuant to  
24 compensation schedules in effect prior to July 1, 1971 shall be  
25 deducted from the monthly payments above specified.

26 (b) Subject to subsection (2) of this section, where such a  
27 surviving spouse has remarried, or where any such child of such worker,  
28 whether living or deceased, is not in the legal custody of such worker  
29 or such surviving spouse there shall be paid for the benefit of and on  
30 account of each such child a sum equal to two percent of such average  
31 monthly wage up to a maximum of five such children in addition to any  
32 payments theretofore paid under compensation schedules in effect prior  
33 to July 1, 1971 for the benefit of and on account of each such child.  
34 In the case of any child or children of a deceased worker not leaving  
35 a surviving spouse or where the surviving spouse has later died, there  
36 shall be paid for the benefit of and on account of each such child a  
37 sum equal to two percent of such average monthly wage up to a maximum

1 of five such children in addition to any payments theretofore paid  
2 under such schedules for the benefit of and on account of each such  
3 child.

4 (2) Beginning July 1, 2003, the monthly payments and the additional  
5 payments for the injured worker's spouse or children provided in this  
6 section may not exceed an amount determined by the department on June  
7 30, 2002, adjusted for inflation on June 30, 2003, and each June 30th  
8 thereafter, and applicable to payments made during the twelve-month  
9 period following the June 30th determination. The amount is determined  
10 by adjusting the amount applicable during the previous twelve-month  
11 period to account for inflation.

12 (3)(a) If the character of the injury or occupational disease is  
13 such as to render the worker so physically helpless as to require the  
14 hiring of the services of an attendant, the department shall make  
15 monthly payments to such attendant for such services as long as such  
16 requirement continues but such payments shall not obtain or be  
17 operative while the worker is receiving care under or pursuant to the  
18 provisions of this title except for care granted at the discretion of  
19 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments  
20 shall not be considered compensation nor shall they be subject to any  
21 limitation upon total compensation payments.

22 (b) No part of such additional payments shall be payable from the  
23 accident fund.

24 (4) The director shall pay monthly from the supplemental pension  
25 fund such an amount as will, when added to the compensation theretofore  
26 paid under compensation schedules in effect prior to July 1, 1971,  
27 equal the amounts hereinabove specified.

28 (5) In cases where money has been or shall be advanced to any such  
29 person from the pension reserve, the additional amount to be paid under  
30 this section shall be reduced by the amount of monthly pension which  
31 was or is predicated upon such advanced portion of the pension reserve.

32 **Sec. 8.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read  
33 as follows:

34 (1) Subject to subsection (2) of this section, the compensation or  
35 death benefits payable pursuant to the provisions of this chapter for  
36 temporary total disability, permanent total disability, or death

1 arising out of injuries or occupational diseases shall be adjusted as  
2 follows:

3 ~~((1))~~ (a) On July 1, 1982, there shall be an adjustment for those  
4 whose right to compensation was established on or after July 1, 1971,  
5 and before July 1, 1982. The adjustment shall be determined by  
6 multiplying the amount of compensation to which they are entitled by a  
7 fraction, the denominator of which shall be the average monthly wage in  
8 the state under RCW 51.08.018 for the fiscal year in which such  
9 person's right to compensation was established, and the numerator of  
10 which shall be the average monthly wage in the state under RCW  
11 51.08.018 on July 1, 1982.

12 ~~((2))~~ (b) In addition to the adjustment established by  
13 ~~((subsection 1))~~ (a) of this ~~((section))~~ subsection, there shall be  
14 another adjustment on July 1, 1983, for those whose right to  
15 compensation was established on or after July 1, 1971, and before July  
16 1983, which shall be determined by multiplying the amount of  
17 compensation to which they are entitled by a fraction, the denominator  
18 of which shall be the average monthly wage in the state under RCW  
19 51.08.018 for the fiscal year in which such person's right to  
20 compensation was established, and the numerator of which shall be the  
21 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

22 ~~((3))~~ (c) In addition to the adjustments under ~~((subsections 1)~~  
23 ~~and 2))~~ (a) and (b) of this ~~((section))~~ subsection, further  
24 adjustments shall be made beginning on July 1, 1984, and on each July  
25 1st thereafter for those whose right to compensation was established on  
26 or after July 1, 1971. The adjustment shall be determined by  
27 multiplying the amount of compensation to which they are entitled by a  
28 fraction, the denominator of which shall be the average monthly wage in  
29 the state under RCW 51.08.018 for the fiscal year in which such  
30 person's right to compensation was established, and the numerator of  
31 which shall be the average monthly wage in the state under RCW  
32 51.08.018 on July 1st of the year in which the adjustment is being  
33 made. The department or self-insurer shall adjust the resulting  
34 compensation rate to the nearest whole cent, not to exceed the average  
35 monthly wage in the state as computed under RCW 51.08.018.

36 (2) Beginning July 1, 2003, the annual adjustments provided for in  
37 this section shall be an amount determined by the department on June  
38 30, 2002, adjusted for inflation on June 30, 2003, and each June 30th

1 thereafter, and applicable to payments made during the twelve-month  
2 period following the June 30th determination. The amount is determined  
3 by adjusting the amount applicable during the previous twelve-month  
4 period to account for inflation.

5 **Sec. 9.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read  
6 as follows:

7 (1)(a) Until July 1, 1993, for the permanent partial disabilities  
8 here specifically described, the injured worker shall receive  
9 compensation as follows:

10 LOSS BY AMPUTATION

11	Of leg above the knee joint with short	
12	thigh stump (3" or less below the	
13	tuberosity of ischium) . . . . .	\$54,000.00
14	Of leg at or above knee joint with	
15	functional stump . . . . .	48,600.00
16	Of leg below knee joint . . . . .	43,200.00
17	Of leg at ankle (Syme) . . . . .	37,800.00
18	Of foot at mid-metatarsals . . . . .	18,900.00
19	Of great toe with resection of metatarsal	
20	bone . . . . .	11,340.00
21	Of great toe at metatarsophalangeal	
22	joint . . . . .	6,804.00
23	Of great toe at interphalangeal joint . . . . .	3,600.00
24	Of lesser toe (2nd to 5th) with resection of	
25	metatarsal bone . . . . .	4,140.00
26	Of lesser toe at metatarsophalangeal	
27	joint . . . . .	2,016.00
28	Of lesser toe at proximal interphalangeal	
29	joint . . . . .	1,494.00
30	Of lesser toe at distal interphalangeal	
31	joint . . . . .	378.00
32	Of arm at or above the deltoid insertion or	
33	by disarticulation at the shoulder . . . . .	54,000.00

1	Of arm at any point from below the deltoid	
2	insertion to below the elbow joint at	
3	the insertion of the biceps tendon . . . . .	51,300.00
4	Of arm at any point from below the elbow	
5	joint distal to the insertion of the	
6	biceps tendon to and including	
7	mid-metacarpal amputation of the	
8	hand . . . . .	48,600.00
9	Of all fingers except the thumb at	
10	metacarpophalangeal joints . . . . .	29,160.00
11	Of thumb at metacarpophalangeal joint or	
12	with resection of carpometacarpal	
13	bone . . . . .	19,440.00
14	Of thumb at interphalangeal joint . . . . .	9,720.00
15	Of index finger at metacarpophalangeal	
16	joint or with resection of metacarpal	
17	bone . . . . .	12,150.00
18	Of index finger at proximal	
19	interphalangeal joint . . . . .	9,720.00
20	Of index finger at distal interphalangeal	
21	joint . . . . .	5,346.00
22	Of middle finger at metacarpophalangeal	
23	joint or with resection of metacarpal	
24	bone . . . . .	9,720.00
25	Of middle finger at proximal	
26	interphalangeal joint . . . . .	7,776.00
27	Of middle finger at distal interphalangeal	
28	joint . . . . .	4,374.00
29	Of ring finger at metacarpophalangeal	
30	joint or with resection of metacarpal	
31	bone . . . . .	4,860.00
32	Of ring finger at proximal interphalangeal	
33	joint . . . . .	3,888.00
34	Of ring finger at distal interphalangeal	
35	joint . . . . .	2,430.00

1	Of little finger at metacarpophalangeal	
2	joint or with resection of metacarpal	
3	bone .....	2,430.00
4	Of little finger at proximal interphalangeal	
5	joint .....	1,944.00
6	Of little finger at distal interphalangeal	
7	joint .....	972.00

8 MISCELLANEOUS

9	Loss of one eye by enucleation .....	21,600.00
10	Loss of central visual acuity in one eye ...	18,000.00
11	Complete loss of hearing in both ears ....	43,200.00
12	Complete loss of hearing in one ear .....	7,200.00

13 (b) Beginning on July 1, 1993, compensation under this subsection  
 14 shall be computed as follows:

15 (i) Beginning on July 1, 1993, the compensation amounts for the  
 16 specified disabilities listed in (a) of this subsection shall be  
 17 increased by thirty-two percent; and

18 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
 19 compensation amounts for the specified disabilities listed in (a) of  
 20 this subsection, as adjusted under (b)(i) of this subsection, shall be  
 21 readjusted to ~~((reflect the percentage change in the consumer price  
 22 index, calculated as follows: The index for the calendar year  
 23 preceding the year in which the July calculation is made, to be known  
 24 as "calendar year A," is divided by the index for the calendar year  
 25 preceding calendar year A, and the resulting ratio is multiplied by the  
 26 compensation amount in effect on June 30 immediately preceding the July  
 27 1st on which the respective calculation is made. For the purposes of  
 28 this subsection, "index" means the same as the definition in RCW  
 29 2.12.037(1))~~ account for inflation.

30 (2) Compensation for amputation of a member or part thereof at a  
 31 site other than those specified in subsection (1) of this section, and  
 32 for loss of central visual acuity and loss of hearing other than  
 33 complete, shall be in proportion to that which such other amputation or  
 34 partial loss of visual acuity or hearing most closely resembles and  
 35 approximates. Compensation shall be calculated based on the adjusted  
 36 schedule of compensation in effect for the respective time period as  
 37 prescribed in subsection (1) of this section.

1 (3)(a) Compensation for any other permanent partial disability not  
2 involving amputation shall be in the proportion which the extent of  
3 such other disability, called unspecified disability, shall bear to the  
4 disabilities specified in subsection (1) of this section, which most  
5 closely resembles and approximates in degree of disability such other  
6 disability, and compensation for any other unspecified permanent  
7 partial disability shall be in an amount as measured and compared to  
8 total bodily impairment. To reduce litigation and establish more  
9 certainty and uniformity in the rating of unspecified permanent partial  
10 disabilities, the department shall enact rules having the force of law  
11 classifying such disabilities in the proportion which the department  
12 shall determine such disabilities reasonably bear to total bodily  
13 impairment. In enacting such rules, the department shall give  
14 consideration to, but need not necessarily adopt, any nationally  
15 recognized medical standards or guides for determining various bodily  
16 impairments.

17 (b) Until July 1, 1993, for purposes of calculating monetary  
18 benefits under (a) of this subsection, the amount payable for total  
19 bodily impairment shall be deemed to be ninety thousand dollars.  
20 Beginning on July 1, 1993, for purposes of calculating monetary  
21 benefits under (a) of this subsection, the amount payable for total  
22 bodily impairment shall be adjusted as follows:

23 (i) Beginning on July 1, 1993, the amount payable for total bodily  
24 impairment under this section shall be increased to one hundred  
25 eighteen thousand eight hundred dollars; and

26 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
27 amount payable for total bodily impairment prescribed in (b)(i) of this  
28 subsection shall be adjusted as provided in subsection (1)(b)(ii) of  
29 this section.

30 (c) Until July 1, 1993, the total compensation for all unspecified  
31 permanent partial disabilities resulting from the same injury shall not  
32 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,  
33 total compensation for all unspecified permanent partial disabilities  
34 resulting from the same injury shall not exceed a sum calculated as  
35 follows:

36 (i) Beginning on July 1, 1993, the sum shall be increased to one  
37 hundred eighteen thousand eight hundred dollars; and

1 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum  
2 prescribed in (b)(i) of this subsection shall be adjusted as provided  
3 in subsection (1)(b)(ii) of this section.

4 (4) If permanent partial disability compensation is followed by  
5 permanent total disability compensation, any portion of the permanent  
6 partial disability compensation which exceeds the amount that would  
7 have been paid the injured worker if permanent total disability  
8 compensation had been paid in the first instance, shall be deducted  
9 from the pension reserve of such injured worker and his or her monthly  
10 compensation payments shall be reduced accordingly.

11 (5) Should a worker receive an injury to a member or part of his or  
12 her body already, from whatever cause, permanently partially disabled,  
13 resulting in the amputation thereof or in an aggravation or increase in  
14 such permanent partial disability but not resulting in the permanent  
15 total disability of such worker, his or her compensation for such  
16 partial disability shall be adjudged with regard to the previous  
17 disability of the injured member or part and the degree or extent of  
18 the aggravation or increase of disability thereof.

19 (6) When the compensation provided for in subsections (1) through  
20 (3) of this section exceeds three times the average monthly wage in the  
21 state as computed under the provisions of RCW 51.08.018, payment shall  
22 be made in monthly payments in accordance with the schedule of  
23 temporary total disability payments set forth in RCW 51.32.090 until  
24 such compensation is paid to the injured worker in full, except that  
25 the first monthly payment shall be in an amount equal to three times  
26 the average monthly wage in the state as computed under the provisions  
27 of RCW 51.08.018, and interest shall be paid at the rate of eight  
28 percent on the unpaid balance of such compensation commencing with the  
29 second monthly payment. However, upon application of the injured  
30 worker or survivor the monthly payment may be converted, in whole or in  
31 part, into a lump sum payment, in which event the monthly payment shall  
32 cease in whole or in part. Such conversion may be made only upon  
33 written application of the injured worker or survivor to the department  
34 and shall rest in the discretion of the department depending upon the  
35 merits of each individual application. Upon the death of a worker all  
36 unpaid installments accrued shall be paid according to the payment  
37 schedule established prior to the death of the worker to the widow or

1 widower, or if there is no widow or widower surviving, to the dependent  
2 children of such claimant, and if there are no such dependent children,  
3 then to such other dependents as defined by this title.

4 (7) Awards payable under this section are governed by the schedule  
5 in effect on the date of injury.

6 **Sec. 10.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and  
7 1993 c 271 s 1 are each reenacted and amended to read as follows:

8 (1) When the total disability is only temporary, the schedule of  
9 payments contained in RCW 51.32.060 (1) (~~and~~) or (2) and (3) shall  
10 apply, so long as the total disability continues.

11 (2) Any compensation payable under this section for children not in  
12 the custody of the injured worker as of the date of injury shall be  
13 payable only to such person as actually is providing the support for  
14 such child or children pursuant to the order of a court of record  
15 providing for support of such child or children. This subsection does  
16 not apply to claims filed on or after July 1, 2003.

17 (3)(a) As soon as recovery is so complete that the worker is  
18 capable of gainful employment on a reasonably continuous basis and the  
19 present earning power of the worker, at any kind of work, is restored  
20 to that existing at the time of the occurrence of the injury, the  
21 payments shall cease. If and so long as the present earning power is  
22 only partially restored and the worker is working, the payments shall:

23 (i) For claims for injuries that occurred before May 7, 1993,  
24 continue in the proportion which the new earning power shall bear to  
25 the old; or

26 (ii) For claims for injuries occurring on or after May 7, 1993,  
27 equal eighty percent of the actual difference between the worker's  
28 present wages and earning power at the time of injury, but: (A) The  
29 total of these payments and the worker's present wages may not exceed  
30 one hundred fifty percent of the average monthly wage in the state as  
31 computed under RCW 51.08.018; (B) the payments may not exceed one  
32 hundred percent of the entitlement as computed under subsection (1) of  
33 this section; and (C) the payments may not be less than the worker  
34 would have received if (a)(i) of this subsection had been applicable to  
35 the worker's claim.

36 (b) No compensation shall be payable under this subsection (3)  
37 unless the loss of earning power shall exceed five percent.

1       (c) The injured worker remains eligible for the benefits provided  
2 in this subsection only until the injured worker's condition is  
3 medically fixed and stable.

4       (4)(a) Whenever the employer of injury requests that a worker who  
5 is entitled to temporary total disability under this chapter be  
6 certified by a physician as able to perform available work other than  
7 his or her usual work, the employer shall furnish to the physician,  
8 with a copy to the worker, a statement describing the work available  
9 with the employer of injury in terms that will enable the physician to  
10 relate the physical activities of the job to the worker's disability.  
11 The physician shall then determine whether the worker is physically  
12 able to perform the work described. The worker's temporary total  
13 disability payments shall continue until the worker is released by his  
14 or her physician for the work, and begins the work with the employer of  
15 injury. If the work thereafter comes to an end before the worker's  
16 recovery is sufficient in the judgment of his or her physician to  
17 permit him or her to return to his or her usual job, or to perform  
18 other available work offered by the employer of injury, the worker's  
19 temporary total disability payments shall be resumed. Should the  
20 available work described, once undertaken by the worker, impede his or  
21 her recovery to the extent that in the judgment of his or her physician  
22 he or she should not continue to work, the worker's temporary total  
23 disability payments shall be resumed when the worker ceases such work.

24       (b) Once the worker returns to work under the terms of this  
25 subsection (4), he or she shall not be assigned by the employer to work  
26 other than the available work described without the worker's written  
27 consent, or without prior review and approval by the worker's  
28 physician.

29       (c) If the worker returns to work under this subsection (4), any  
30 employee health and welfare benefits that the worker was receiving at  
31 the time of injury shall continue or be resumed at the level provided  
32 at the time of injury. Such benefits shall not be continued or resumed  
33 if to do so is inconsistent with the terms of the benefit program, or  
34 with the terms of the collective bargaining agreement currently in  
35 force.

36       (d) In the event of any dispute as to the worker's ability to  
37 perform the available work offered by the employer, the department  
38 shall make the final determination.

1 (5) No worker shall receive compensation for or during the day on  
2 which injury was received or the three days following the same, unless  
3 his or her disability shall continue for a period of fourteen  
4 consecutive calendar days from date of injury: PROVIDED, That attempts  
5 to return to work in the first fourteen days following the injury shall  
6 not serve to break the continuity of the period of disability if the  
7 disability continues fourteen days after the injury occurs.

8 (6) Should a worker suffer a temporary total disability and should  
9 his or her employer at the time of the injury continue to pay him or  
10 her the wages which he or she was earning at the time of such injury,  
11 such injured worker shall not receive any payment provided in  
12 subsection (1) or (2) of this section during the period his or her  
13 employer shall so pay such wages.

14 (7) (~~In no event shall~~) (a) For claims with date of injury or  
15 manifestation of occupational disease before July 1, 2003, the monthly  
16 payments provided in this section may not exceed the applicable  
17 percentage of the average monthly wage in the state as computed under  
18 the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
	June 30, 1993	105%
	June 30, 1994	110%
	June 30, 1995	115%
	June 30, 1996	120%

19  
20  
21  
22  
23  
24 (b) For claims with date of injury or manifestation of occupational  
25 disease on or after July 1, 2003, but before June 30, 2004, the monthly  
26 payments provided in this subsection may not exceed one hundred twenty  
27 percent of the average monthly wage in the state on June 30, 2003. For  
28 all claims with date of injury or manifestation of occupational disease  
29 on or after July 1, 2004, the monthly payments provided in this  
30 subsection may not exceed an amount determined by the department on  
31 June 30, 2003, and each June 30th thereafter, and applicable to claims  
32 with date of injury or manifestation of occupational disease occurring  
33 in the twelve-month period following the June 30th determination. The  
34 amount is determined by adjusting the June 30, 2003, amount for  
35 inflation on June 30, 2004. In subsequent years, the department shall

1 adjust the amount applicable during the previous twelve-month period to  
2 account for inflation.

3 (8) If the supervisor of industrial insurance determines that the  
4 worker is voluntarily retired and is no longer attached to the work  
5 force, benefits shall not be paid under this section.

6 **Sec. 11.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
7 as follows:

8 (1) One of the primary purposes of this title is to enable the  
9 injured worker to become employable at gainful employment. To this  
10 end, the department or self-insurers shall utilize the services of  
11 individuals and organizations, public or private, whose experience,  
12 training, and interests in vocational rehabilitation and retraining  
13 qualify them to lend expert assistance to the supervisor of industrial  
14 insurance in such programs of vocational rehabilitation as may be  
15 reasonable to make the worker employable consistent with his or her  
16 physical and mental status. Where, after evaluation and recommendation  
17 by such individuals or organizations and prior to final evaluation of  
18 the worker's permanent disability and in the sole opinion of the  
19 supervisor or supervisor's designee, whether or not medical treatment  
20 has been concluded, vocational rehabilitation is both necessary and  
21 likely to enable the injured worker to become employable at gainful  
22 employment, the supervisor or supervisor's designee may, in his or her  
23 sole discretion, pay or, if the employer is a self-insurer, direct the  
24 self-insurer to pay the cost as provided in subsection (3) of this  
25 section.

26 (2) When in the sole discretion of the supervisor or the  
27 supervisor's designee vocational rehabilitation is both necessary and  
28 likely to make the worker employable at gainful employment, then the  
29 following order of priorities shall be used:

- 30 (a) Return to the previous job with the same employer;  
31 (b) Modification of the previous job with the same employer  
32 including transitional return to work;  
33 (c) A new job with the same employer in keeping with any  
34 limitations or restrictions;  
35 (d) Modification of a new job with the same employer including  
36 transitional return to work;  
37 (e) Modification of the previous job with a new employer;

1 (f) A new job with a new employer or self-employment based upon  
2 transferable skills;

3 (g) Modification of a new job with a new employer;

4 (h) A new job with a new employer or self-employment involving on-  
5 the-job training;

6 (i) Short-term retraining and job placement.

7 (3)(a) Except as provided in (b) of this subsection, costs for  
8 vocational rehabilitation benefits allowed by the supervisor or  
9 supervisor's designee under subsection (1) of this section may include  
10 the cost of books, tuition, fees, supplies, equipment, transportation,  
11 child or dependent care, and other necessary expenses for any such  
12 worker in an amount not to exceed three thousand dollars in any fifty-  
13 two week period (~~((except as authorized by RCW 51.60.060))~~), and the cost  
14 of continuing the temporary total disability compensation under RCW  
15 51.32.090 while the worker is actively and successfully undergoing a  
16 formal program of vocational rehabilitation.

17 (b) Beginning with vocational rehabilitation plans approved on or  
18 after July 1, 1999, costs for vocational rehabilitation benefits  
19 allowed by the supervisor or supervisor's designee under subsection (1)  
20 of this section may include the cost of books, tuition, fees, supplies,  
21 equipment, child or dependent care, and other necessary expenses for  
22 any such worker in an amount not to exceed (~~((four))~~) five thousand  
23 dollars in any fifty-two week period (~~((except as authorized by RCW  
24 51.60.060))~~), and the cost of transportation and continuing the  
25 temporary total disability compensation under RCW 51.32.090 while the  
26 worker is actively and successfully undergoing a formal program of  
27 vocational rehabilitation.

28 (c) The expenses allowed under (a) or (b) of this subsection may  
29 include training fees for on-the-job training and the cost of  
30 furnishing tools and other equipment necessary for self-employment or  
31 reemployment. However, compensation or payment of retraining with job  
32 placement expenses under (a) or (b) of this subsection may not be  
33 authorized for a period of more than fifty-two weeks, except that such  
34 period may, in the sole discretion of the supervisor after his or her  
35 review, be extended for an additional fifty-two weeks or portion  
36 thereof by written order of the supervisor.

37 (d) In cases where the worker is required to reside away from his

1 or her customary residence, the reasonable cost of board and lodging  
2 shall also be paid.

3 (e) Costs paid under this subsection shall be chargeable to the  
4 employer's cost experience or shall be paid by the self-insurer as the  
5 case may be.

6 (4) In addition to the vocational rehabilitation expenditures  
7 provided for under subsection (3) of this section, an additional five  
8 thousand dollars may, upon authorization of the supervisor or the  
9 supervisor's designee, be expended for: (a) Accommodations for an  
10 injured worker that are medically necessary for the worker to  
11 participate in an approved retraining plan; and (b) accommodations  
12 necessary to perform the essential functions of an occupation in which  
13 an injured worker is seeking employment, consistent with the retraining  
14 plan or the recommendations of a vocational evaluation. The injured  
15 worker's attending physician must verify the necessity of the  
16 modifications or accommodations. The total expenditures authorized in  
17 this subsection and the expenditures authorized under RCW 51.32.250  
18 shall not exceed five thousand dollars.

19 (5) The department shall establish criteria to monitor the quality  
20 and effectiveness of rehabilitation services provided by the  
21 individuals and organizations used under subsection (1) of this  
22 section. The state fund shall make referrals for vocational  
23 rehabilitation services based on these performance criteria.

24 (6) The department shall engage in, where feasible and cost-  
25 effective, a cooperative program with the state employment security  
26 department to provide job placement services under this section.

27 (7) The benefits in this section shall be provided for the injured  
28 workers of self-insured employers. Self-insurers shall report both  
29 benefits provided and benefits denied under this section in the manner  
30 prescribed by the department by rule adopted under chapter 34.05 RCW.  
31 The director may, in his or her sole discretion and upon his or her own  
32 initiative or at any time that a dispute arises under this section,  
33 promptly make such inquiries as circumstances require and take such  
34 other action as he or she considers will properly determine the matter  
35 and protect the rights of the parties.

36 (8) Except as otherwise provided in this section, the benefits  
37 provided for in this section are available to any otherwise eligible

1 worker regardless of the date of industrial injury. However, claims  
2 shall not be reopened solely for vocational rehabilitation purposes.

3 **Sec. 12.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read  
4 as follows:

5 (1) When the injury to any worker is so serious as to require his  
6 or her being taken from the place of injury to a place of treatment,  
7 his or her employer shall, at the expense of the medical aid fund, or  
8 self-insurer, as the case may be, furnish transportation to the nearest  
9 place of proper treatment.

10 (2) Every worker whose injury results in the loss of one or more  
11 limbs or eyes shall be provided with proper artificial substitutes and  
12 every worker, who suffers an injury to an eye producing an error of  
13 refraction, shall be once provided proper and properly equipped lenses  
14 to correct such error of refraction and his or her disability rating  
15 shall be based upon the loss of sight before correction.

16 (3) Every worker whose accident results in damage to or destruction  
17 of an artificial limb, eye, or tooth, shall have same repaired or  
18 replaced.

19 (4) Every worker whose hearing aid or eyeglasses or lenses are  
20 damaged, destroyed, or lost as a result of an industrial accident shall  
21 have the same restored or replaced. The department or self-insurer  
22 shall be liable only for the cost of restoring damaged hearing aids or  
23 eyeglasses to their condition at the time of the accident.

24 (5) All mechanical appliances necessary in the treatment of an  
25 injured worker, such as braces, belts, casts, and crutches, shall be  
26 provided and all mechanical appliances required as permanent equipment  
27 after treatment has been completed shall continue to be provided or  
28 replaced without regard to the date of injury or date treatment was  
29 completed, notwithstanding any other provision of law.

30 (6) A worker, whose injury is of such short duration as to bring  
31 him or her within the time limit provisions of RCW 51.32.090, shall  
32 nevertheless receive during the omitted period medical, surgical, and  
33 hospital care and service and transportation under the provisions of  
34 this chapter.

35 (7) Whenever in the sole discretion of the supervisor it is  
36 reasonable and necessary to provide residence modifications necessary

1 to meet the needs and requirements of the worker who has sustained  
2 catastrophic injury, the department or self-insurer may be ordered to  
3 pay an amount determined as follows:

4 (a) For claims with date of injury or manifestation of occupational  
5 disease before July 1, 2003, the amount may not ((~~to~~)) exceed the  
6 state's average annual wage for one year as determined under RCW  
7 50.04.355(~~(, as now existing or hereafter amended,~~)) toward the cost of  
8 such modifications or construction. ((Such))

9 (b) For claims with date of injury or manifestation of occupational  
10 disease on or after July 1, 2003, but before June 30, 2004, the amount  
11 provided for in this subsection may not exceed one hundred twenty  
12 percent of the average monthly wage in the state on June 30, 2003. For  
13 all claims with date of injury or manifestation of occupational disease  
14 on or after July 1, 2004, the amount provided in this subsection may  
15 not exceed an amount determined by the department on June 30, 2003, and  
16 each June 30th thereafter, and applicable to claims with date of injury  
17 or manifestation of occupational disease occurring in the twelve-month  
18 period following the June 30th determination. The amount is determined  
19 by adjusting the June 30, 2003, amount for inflation on June 30, 2004.  
20 In subsequent years, the department shall adjust the amount applicable  
21 during the previous twelve-month period to account for inflation.  
22 Payment shall ((~~only~~)) be made under this subsection only for the  
23 construction or modification of a residence in which the injured worker  
24 resides. Only one residence of any worker may be modified or  
25 constructed under this subsection, although the supervisor may order  
26 more than one payment for any one home, up to the maximum amount  
27 permitted by this section.

28 (8)(a) Whenever in the sole discretion of the supervisor it is  
29 reasonable and necessary to modify a motor vehicle owned by a worker  
30 who has become an amputee or becomes paralyzed because of an industrial  
31 injury, the supervisor may pay or order a self-insurer to pay as  
32 follows:

33 (i) For claims with date of injury or manifestation of occupational  
34 disease before July 1, 2003, up to fifty percent of the state's average  
35 annual wage for one year, as determined under RCW 50.04.355(~~(, to be~~  
36 paid by the department or self-insurer)) toward the costs thereof.

37 (ii) For claims with date of injury or manifestation of  
38 occupational disease on or after July 1, 2003, but before June 30,

1 2004, the amount will be up to fifty percent of the state's average  
2 annual wage as of June 30, 2003, adjusted for inflation. For all  
3 claims with date of injury or manifestation of occupational disease on  
4 or after July 1, 2004, the amount provided in this subsection may not  
5 exceed an amount determined by the department on June 30, 2003, and  
6 each June 30th thereafter, and applicable to claims with date of injury  
7 or manifestation of occupational disease occurring in the twelve-month  
8 period following the June 30th determination. The amount is determined  
9 by adjusting the June 30, 2003, amount for inflation on June 30, 2004.  
10 In subsequent years, the department shall adjust the amount applicable  
11 during the previous twelve-month period to account for inflation.

12 (b) In the sole discretion of the supervisor after his or her  
13 review, the amount paid under this subsection may be increased by no  
14 more than four thousand dollars by written order of the supervisor.

15 (9) The benefits provided by subsections (7) and (8) of this  
16 section are available to any otherwise eligible worker regardless of  
17 the date of industrial injury.

18 NEW SECTION. Sec. 13. A new section is added to chapter 51.08 RCW  
19 to read as follows:

20 The department may adopt rules necessary to implement section 2 of  
21 this act.

22 NEW SECTION. Sec. 14. A new section is added to chapter 51.32 RCW  
23 to read as follows:

24 The department may adopt rules necessary to implement section 10 of  
25 this act.

26 NEW SECTION. Sec. 15. This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 July 1, 2003.

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